

REMARKS

Favorable reconsideration and allowance of this application are requested.

I. Introduction

Claims 1-29 remain pending herein for consideration, of which claims 11-20 and 24-28 have been withdrawn from consideration as being directed to patentably distinct species non-elected for prosecution herein. The non-elected claims are being retained in the subject application for possible rejoinder upon allowance of a claim generic to the same.¹

II. Response to 35 USC §112, Second Paragraph

It is of course axiomatic that an applicant can of course be his own lexicographer. (MPEP § 2173.20). Thus, the fact that the present applicants employed the phrase "fibrous support" as the name of the recited structure cannot possibly invoke indefiniteness within the purview of 35 USC §112, second paragraph. However, rather than to continue arguing against this unnecessary issue that was raised,² the applicants have adopted what appears to the Examiner's preference, namely that the claimed invention is a "fibrous web". The preamble expressions for all pending claims have therefore been changed accordingly. Withdrawal of the rejection advanced under 35 USC §112, second paragraph is therefore in order.

¹ Although claims 11-20 and 24-28 have been withdrawn from consideration they have nonetheless been amended per the amendment instructions above so the language thereof is consistent with the claims under examination and thereby avoid objection upon allowance of the examined claims (i.e., since the withdrawn claims would then also be rejoined assuming a generic examined claim is allowed).

² A claim may not be rejected solely because of the type of language used to define the subject matter for which patent protection is sought. *In re Swinehart*, 160 USPQ 226 (CCPA 1971).

III. Response to Drawing Objection

An objection has been raised under 37 CFR §1.83(a) due to the Examiner's believe that the "fixing points" defined by claim 7 are required to be depicted in a drawing. Applicants note in this regard that the "fixing points" are those areas of the web which are suitable regions to attach the web to the ground (e.g., by staking). Thus, claim 7 has been rephrased so as to refer inferentially to those areas on the web for attachment to the ground. The affirmatively claimed grid, according to claim 7, may be positioned exclusively in such areas.

It is suggested therefore that amendments made to claim 7 obviate the need for a drawing figure. Accordingly, withdrawal of the objection raised under 37 CFR §1.83(a) is in order.

IV. Response to 35 USC §103(a) Issues

The only issues to be resolved in this application are the Examiner's art-based rejections of record. Specifically, the Examiner asserts that claims 1-3 and 21 are unpatentably "obvious" under 35 USC §103(a) from Weber (EP 454104 A1). Weber has also been combined with Anton (SI 9600317 A2) to reject claims 4-10, 22-23 and 29 under this same statutory provision. Applicants respectfully disagree.

At the outset, it must be emphasized that claim 1 reads as follows.

A biodegradable fibrous web for soil mulching comprising a
fibrous mass and *biodegradable thermobonding fibres*
distributed in the fibrous mass. (emphasis added)

In other words, the support (or web as the Examiner prefers to call the product) is formed of a fibrous web in which thermobonding fibres have been spread. The name "thermobonding fibres" describe the function of such fibres – i.e., they are present in the

fibrous web in order to maintain the structural integrity of the resulting web (support) product. Therefore, according to the present invention, the thermobonding fibres have to be spread (distributed) throughout the product as uniformly as possible.

The Examiner cites to EP 454 104 (Weber), which clearly describes a product that is different from the presently claimed fibrous web. Weber does in fact have a fibrous web, but the integrity of the web is **not** ensured by means of thermobonding fibres but instead by means of a liquid latex (best described on page 6, lines 26, and 27). In the applicants' view of the Weber description, it is clear that in spite of the fact that he mentions synthetic fibers, he does not say a word about using the synthetic fibres for **bonding** the web. In fact, by repeatedly explaining the presence and importance of the latex (page 1, line 52; page 3, lines 3, 9 - 12; page 4, line 20, 24 - 25; etc.) he does not leave a room for any bonding means other than the liquid latex.

In spite of that fact, the Examiner cites Ehret (USP 5,783,504),³ and argues that since Ehret uses polylactic acid fibres it would have been obvious to use such in Weber. However, the Examiner has missed the point in Ehret. Specifically, Ehret teaches that the **entire** nonwoven layers or plies of his product are of PLA fibres. See for instance column 2, lines 22, and 50 - 53. Furthermore, Ehret teaches on column 5, lines 29 - 35 how the film used for bonding the nonwoven plies has a (clearly) lower melting temperature than the one of PLA fibres whereby the laminating can be done without sacrificing the strength and softness of the nonwoven. In other words, Ehret sees the melting of the PLA fibres as a **negative** feature. Though Ehret mentions on column 5, lines 39, and 44 the possibility of thermal bonding of the nonwoven the only instance he describes the bonding is on column 4, lines 41 - 48, where he talks about a heated calender, which is used to combine the laminate. In applicants' opinion, the true teaching of the Ehret is with regard to bonding the plies together by means of the film

arranged therebetween, and **not** allowing the PLA fibres to melt as it changes the product in a less appealing direction.

Additionally, the PLA fibres have a different function in Ehret as compared to the product as claimed herein. Specifically, as noted above, in the presently claimed product, the fibres are employed as bonding fibres, whereas Ehret uses the fibres as the main web material.

Thus, withdrawal of the rejection advanced against claims 1-3 and 21 based on Weber is in order.

The Examiner has further rejected claims 4-10, 22-23 and 29 as allegedly being "obvious" under 35 USC §103(a) from Weber in view of Anton. Applicants suggest that such a combination is inappropriate for several reasons. Firstly, the claims at issue depend directly or indirectly from independent claim 1 and as such are allowable for the same reasons note above.

Secondly, in applicants' opinion the Examiner's discussion goes a bit too far on page 6 of the Office Action. Specifically, applicants cannot discern any motivation provided to an ordinarily skilled person to combine the teachings of Weber and Anton, as Weber has nothing on his web and he does not need or require the net or the grid.

As to the basis weight of the grid (e.g., as defined by claim 6), applicants note that Anton does not say a word about such subject matter. And Weber of course does not contain any such disclosure since there is no need of a grid in the Weber product. It is therefore suggested that the reasoning to support an obviousness rejection under 35 USC §103(a) is flawed.

³ The Examiner has not actually applied Ehret as a reference in the rejection, but instead merely refers the applicants' attention to the same. So applicants may be deemed fully responsive, a discussion of the inappropriateness of Ehret is therefore in order.

As to claim 7, since neither Weber nor Anton talk about fastening the support on the ground, they cannot teach the positioning of the grid in the way claimed.

As to claims 9, 22 and 23, they are dependent on prior claims which are deemed allowable and therefore do not need to stand on their own.

With regard to claims 8 and 29, the Examiner has apparently interpreted Anton to discuss a grid glued onto the base layer. However, Anton teaches the needling of the two layers, but does *not* teach the gluing of the cover/net/textile on the base layer. In applicants' opinion the spattering of latex relates to the scattering of seeds. i.e., the seeds are glued by means of the latex on the Anton textile/net. Without the glue the seeds would not remain on the base layer. Thereby the only function the spattered glue has in the context of the Anton product is the gluing of the seeds.

Therefore, withdrawal of the rejection advanced against the pending claims herein based on the combination of Weber and Anton is in order.

III. Information Disclosure Statement

The Examiner's attention is directed to commonly owned copending U.S. application Serial Nos. 10/524,136 and 10/524,138 filed on March 3, 2005 and February 11, 2005, respectively, that may be deemed relevant to the herein claimed subject matter. Fortunately, Examiner Palo is examining both this application and each of the '136 and '138 applications. In this regard, an Official Action was issued in the '138 application on August 10, 2007 with a response thereto being filed on November 12, 2007. Such papers can be viewed in the USPTO's PAIR system at

http://portal.uspto.gov/external/portal/?url=/luta/p/kcxm/04_Sj9SPykssy0xPLMnMz0vM0_Y_QjzKLN4gPMATJgFieAfgRqCLGpuqijnABX4_83FT9IKBEpDIQxNDCRz8qJzU9MbIS_P1jWz9AvvA3NDSi3NsRAHxEBJg/delta/base64xml/L0JJSk03dWIDU1IKSi9vQXdx3QUFNWwWdBQ0VJUWwhDRUVJaEZLQSEvNEZH2Z2RZbktKMEZSb1hmckNIZGgvN18wXzE

[4TC8zL3NhLmlddEJpYg!!?selectedTab=ifwtab&isSubmitted=isSubmitted&dosnum=10524138&public_selectedSearchOption=](http://portal.uspto.gov/external/portal/?selectedTab=ifwtab&isSubmitted=isSubmitted&dosnum=10524138&public_selectedSearchOption=)

Similarly, an Official Action was recently issued on August 10, 2007 in the '136 application and can be viewed in the USPTO's PAIR system at http://portal.uspto.gov/external/portal/?selectedTab=ifwtab&isSubmitted=isSubmitted&dosnum=10524136&public_selectedSearchOption=

Consideration of the '136 and '138 applications and the references cited therein is requested, for which purpose an appropriate form listing the same is attached.

IV. Conclusion

Every effort has been made to advance prosecution of this application to allowance. Therefore, in view of the amendments and remarks above, applicant suggests that all claims are in condition for allowance and Official Notice of the same is solicited.

Should any small matters remain outstanding, the Examiner is encouraged to telephone the Applicants' undersigned attorney so that the same may be resolved without the need for an additional written action and reply.

An early and favorable reply on the merits is awaited.

V. Fee Authorization

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed

GIRARD et al
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herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140.

Respectfully submitted,

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